



Federal Communications Commission  
Washington, D.C. 20554

August 23, 2016

*In Reply Refer to:*  
1800B3-ATS

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In re: Little Rock Hispanic Education Family  
Foundation  
New LPFM, Little Rock, AR  
Facility ID No. 196053  
File No. BNPL-20131114AQI

Bakersfield Hispanic Education Family  
Foundation  
New LPFM, Bakersfield, CA  
Facility ID No. 196038  
File No. BNPL-20131114AQA

South Omaha Hispanic Education  
Family Foundation  
New LPFM, Bellevue, NE  
Facility ID No. 197574  
File No. BNPL-20131115AOZ

South Lawton Hispanic Education  
Family Foundation  
New LPFM, Lawton, OK  
Facility ID No. 197539  
File No. BNPL-20131115AGJ

South El Paso Hispanic Education  
Family Foundation  
New LPFM, El Paso, TX  
Facility ID No. 196408  
File No. BNPL-20131115AEU

North Eagle Pass Hispanic Education  
Family Foundation  
New LPFM, Eagle Pass, TX  
Facility ID No. 196423  
File No. BNPL-20131115AEX

South Corpus Christi Hispanic  
Education Family Foundation  
New LPFM, Corpus Christi, TX  
Facility ID No. 197525  
File No. BNPL-20131115AFE

North Laredo Hispanic Education  
Family Foundation  
New LPFM, Laredo, TX  
Facility ID No. 196431  
File No. BNPL-20131115AFH

North Odessa Hispanic Education  
Family Foundation  
New LPFM, Odessa, TX  
Facility ID No. 197531  
File No. BNPL-20131115AFV

North Victoria Hispanic Education  
Family Foundation  
New LPFM, Victoria, TX  
Facility ID No. 197536  
File No. BNPL-20131115AGD

North Amarillo Hispanic Education  
Family Foundation  
New LPFM, Amarillo, TX  
Facility ID No. 197535  
File No. BNPL-20131115AGF

South Brownsville Hispanic Education  
Family Foundation  
New LPFM, Brownsville, TX  
Facility ID No. 197545  
File No. BNPL-20131115AGN

South Tyler Hispanic Education  
Family Foundation  
New LPFM, Tyler, TX  
Facility ID No. 197547  
File No. BNPL-20131115AHZ

Hazler Hispanic Community Radio  
New LPFM, Hazlet, NJ  
Facility ID No. 194082  
File No. BNPL-20131112AGC

Norfolk Community Radio  
New LPFM, Norfolk, VA  
Facility ID No. 194526  
File No. BNPL-20131112AGS

Pittsburgh Community Radio  
New LPFM, Pittsburgh, PA  
Facility ID No. 194566  
File No. BNPL-20131112AHW

Salt Lake City Community Radio  
New LPFM, Salt Lake City, UT  
Facility ID No. 194237  
File No. BNPL-20131112ALQ

Abilene Hispanic Community Radio  
New LPFM, Abilene, TX  
Facility ID No. 195642  
File No. BNPL-20131114AOX

Family Christian Radio of Wichita  
New LPFM, Wichita Falls, TX  
Facility ID No. 195653  
File No. BNPL-20131114AOZ

Wichita Falls Cesar Chavez Foundation  
New LPFM, Wichita Falls, TX  
Facility ID No. 195680  
File No. BNPL-20131114APE

Temple of Power  
New LPFM, Ennis, TX  
Facility ID No. 194050  
File No. BNPL-20131111ASB

Balch Springs Radio de la Comunidad  
New LPFM, Balch Springs, TX  
Facility ID No. 193782  
File No. BNPL-20131112ACT

Mesquite African American Community  
New LPFM, Mesquite, TX  
Facility ID No. 194457  
File No. BNPL-20131112AGL

North Fort Worth Hispanic  
Community Church  
New LPFM, Fort Worth, TX  
Facility ID No. 194534  
File No. BNPL-20131112AGY

Cadena Radial Remanente  
New LPFM, La Quinta  
Facility ID No. 195343  
File No. BNPL-20131113ABE

Cadena Radial Mision y Vision  
New LPFM, Rancho Mirage, CA  
Facility ID No. 195336  
File No. BNPL-20131113ABF

Laredo Hispanic Community Church  
New LPFM, Laredo, TX  
Facility ID No. 196849  
File No. BNPL-20131114BUD

Fundacion Esperanza Viva  
New LPFM, Grand Prairie, TX  
Facility ID No. 197143  
File No. BNPL-20131115ALQ

**Informal Objection and  
Petition to Deny**

Dear Counsel, Ms. Bradley, and Mr. Shaw:

We have before us the above-referenced applications (collectively, Applications) filed by various applicants (collectively, Applicants) for construction permits for new LPFM stations. We also have before us: 1) the Informal Objection filed on December 2, 2013, by REC Networks (REC Objection); 2) the Supplement to the REC Objection filed on January 12, 2015 (REC Supplement), and 3) the Petition to Deny filed by Common Frequency on January 9, 2014 (CF Petition).<sup>1</sup> For the reasons set forth below, we deny the REC Objection and the CF Petition, and grant the Applications.

**Background.** The Applications were filed during the 2013 LPFM filing window and all identified Antonio Cesar Guel (Guel) as the certifying engineer.<sup>2</sup> The REC Objection was filed against

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<sup>1</sup> The REC Objection was filed against each of the above-referenced applications. The REC Supplement was filed against the applications of Laredo Hispanic Community Church (LHCC) and Fundacion Esperanza Viva (FEV). The CF Petition was filed against the applications of Bakersfield Hispanic Education Family Foundation, South El Paso Hispanic Education Family Foundation, North Amarillo Hispanic Education Family Foundation, Pittsburgh Community Radio, and North Fort Worth Hispanic Community Church. Balch Springs Radio de la Comunidad and North Odessa Hispanic Education Family Foundation filed oppositions to the REC Objection on February 18, 2014, and February 17, 2015, respectively. No other opposition has been received from any of the Applicants.

<sup>2</sup> Applications at Section VI, Preparer's Certification.

245 applications for which Guel served as the certifying engineer. REC argues that all 245 of these applications—including the Applications referenced in this letter—were not filed by the Applicants themselves but rather by Guel and Hispanic Christian Community Network, Inc., the licensee of several LPTV stations and of which Guel is the President.<sup>3</sup> REC notes that the Applications contain identical educational statements that do not reference the local community.<sup>4</sup> REC also notes that certain Applications were filed sequentially in alphabetical order, that all the Applications provided Guel's telephone number and e-mail address, and that all the Applicants were incorporated in Texas within several days of each other, even though not all of the Applicants are based in Texas.<sup>5</sup> Finally, REC argues that some states where the Applicants propose to operate have restrictions on non-profits incorporated in other states operating within the state.<sup>6</sup> The REC Supplement argues that LHCC and FEV are no longer eligible to hold noncommercial licenses because their corporate status is listed as forfeited by the Texas Secretary of State (TSOS) and therefore they are no longer recognized as nonprofit entities.<sup>7</sup>

The CF Objection was filed against 63 applications that identified Mr. Guel as their engineer. It raises arguments similar to those raised in the REC Objection: that the Applications “use the boiler-plate forms, uniform descriptions of purpose and uniform purpose of entity throughout” and all identify Guel as their registered agent and provide his contact information.<sup>8</sup> CF also argues that the Applicants’ non-profit status “is sham” because their Articles allow “any director [to] be compensated for proselytizing or *for almost any other activity*.”<sup>9</sup> CF also opines that it is questionable whether the applicants have obtained reasonable assurance of site availability at the towers identified in the Application.<sup>10</sup>

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),<sup>11</sup> petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>12</sup>

We reject the arguments that the Applications should be dismissed because of their similarities to each other or other applications filed by Guel as a consultant. REC and CF have failed to show that the Applicants have any actual affiliation beyond similar names, nor have they demonstrated that they are

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<sup>3</sup> REC Objection at 1.

<sup>4</sup> *Id.* at 2. The educational statements are included as Exhibit 2 in each Application.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 3. The REC Objection also raises specific allegations about certain applications not subject to this letter. REC Objection at 3-4.

<sup>7</sup> REC Supplement at 4. The REC Supplement raises the same allegation about 25 additional applications that identified Guel as their engineering consultant but which are not subject to this letter.

<sup>8</sup> CF Petition at 2-4.

<sup>9</sup> *Id.* at 4 (emphasis in original).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> 47 U.S.C. § 309(d).

<sup>12</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

commonly controlled. Similarities in applications do not demonstrate common control of the applications.<sup>13</sup> Additionally, the common contact representative identified in the Applications—Guel—is an engineering consultant. We have previously noted that it is common for multiple applicants to have the same engineering consultant,<sup>14</sup> and many applicants will list their counsel or engineering consultants as their contact representatives. We also reject REC’s argument involving the sequential nature of the filing of the Applications or the Applicants’ incorporation in Texas. These matters are attributable to the Applicants’ utilization of a common consultant and present no violation of any Commission rule or policy.

We also reject REC’s argument that we should dismiss any applications for failure to comply with a state’s foreign corporation rule. The Commission generally will not deny an application for a broadcast facility based on a licensee’s or permittee’s non-compliance with state corporate law “when no challenge has been made in the State Courts and the determination is one that is more appropriately a matter of state resolution.”<sup>15</sup> We likewise reject CF’s argument that the Applicants’ non-profit status is dubious. CF has made no showing that the Applicants were improperly incorporated or are otherwise not recognized by the State of Texas.<sup>16</sup>

We also reject REC’s arguments that LHCC and FEV are no longer eligible to hold an LPFM license. We have previously found an applicant for a full-service noncommercial educational (NCE) construction permit that had allowed its corporate status to lapse was still eligible for an NCE license because it had been reinstated by the state where it was incorporated and that reinstatement was given retroactive recognition by the state to the time the applicant filed its application.<sup>17</sup> Here, LHCC’s and FEV’s corporate status has been reinstated by the TSOS and both entities have had their good standing restored.<sup>18</sup> Thus, any gap in these applicants’ legal corporate existence has been erased. Accordingly, LHCC and FEV have satisfied the eligibility requirements of the LPFM service.<sup>19</sup>

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<sup>13</sup> *Mt. Zion Educ. Assoc.*, Letter Order, 25 FCC Rcd 15088, 15091-92 (MB 2010) (similarities in applications prepared by a third-party—such as being filed the same day, using the same engineer, having similar exhibits—do not demonstrate common control of applicants). Additionally, the following Applicants have amended their applications to provide revised and unique educational narratives: North Odessa Hispanic Education Family Foundation, Hazler Hispanic Community Radio, Norfolk Community Radio, Pittsburgh Community Radio, Salt Lake City Community Radio, Balch Springs Radio de La Comunidad, Mesquite African America Community, North Fort Worth Hispanic Community Church, and LHCC.

<sup>14</sup> *Eternal Word Television Network, Inc.*, Letter Order, 24 FCC Rcd 4691, 4692 (MB 2009).

<sup>15</sup> *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972, 4974, para. 8 (2001); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855, para. 10 (1997).

<sup>16</sup> *Compare Malibu FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7705 (2015) (affirming dismissal of LPFM applicant that had not completed incorporation process with State of California at the time it filed its application); *Robert Lund*, Letter Order, 30 FCC Rcd 14367 (MB 2015) (affirming dismissal of LPFM applications where Oregon Department of Justice determined applicants were not properly incorporated).

<sup>17</sup> *See New Bohemia Group, Inc.*, Letter Order, 24 FCC Rcd 1357 (MB 2009) (finding that corporate dissolution was without effect because status was reinstated *nunc pro tunc*).

<sup>18</sup> The records of the TSOS may be accessed at <https://mycpa.cpa.state.tx.us/coa/Index.html>.

<sup>19</sup> 47 CFR § 73.853(a). *See also Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213, para. 18 (2000) (“having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of [47 U.S.C. § 397(6)(A)].”).

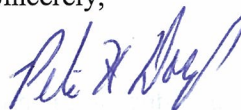
Finally, we give no weight to CF's argument that the Applicants may have lacked site availability. This argument is entirely based on speculation, and CF does not identify a single application that actually apparently lacked site availability, nor does CF provide documentation to support its argument. Accordingly, we will deny the REC Objection and the CF Petition, and grant the Applications.

**Conclusion/Action.** Accordingly, IT IS ORDERED that the Informal Objection filed on December 2, 2013, by REC Networks IS DENIED with respect to the applications filed by Little Rock Hispanic Education Family Foundation, Bakersfield Hispanic Education Family Foundation, South Omaha Hispanic Education Family Foundation, South Lawton Hispanic Education Family Foundation, South El Paso Hispanic Education Family Foundation, North Eagle Pass Hispanic Education Family Foundation, South Corpus Christi Hispanic Education Family Foundation, North Laredo Hispanic Education Family Foundation, North Odessa Hispanic Education Family Foundation, North Victoria Hispanic Education Family Foundation, North Amarillo Hispanic Education Family Foundation, South Brownsville Hispanic Education Family Foundation, South Tyler Hispanic Education Family Foundation, Hazler Hispanic Community Radio, Norfolk Community Radio, Pittsburgh Community Radio, Salt Lake City Community Radio, Abilene Hispanic Community Radio, Family Christian Radio of Wichita, Wichita Falls Cesar Chavez Foundation, Temple of Tower, Balch Springs Radio de la Comunidad, Mesquite African American Community, North Fort Worth Hispanic Community Church, Cadena Radial Remanente, Cadena Radial Mision y Vision, Laredo Hispanic Community Church, and Fundacion Esperanza Viva.

IT IS FURTHER ORDERED that the Petition to Deny filed on January 9, 2014, by Common Frequency IS DENIED with respect to the applications filed by Bakersfield Hispanic Education Family Foundation, South El Paso Hispanic Education Family Foundation, North Amarillo Hispanic Education Family Foundation, Pittsburgh Community Radio, and North Fort Worth Hispanic Community Church.

IT IS FURTHER ORDERED that the above-referenced applications for construction permits for new LPFM stations ARE GRANTED.

Sincerely,



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Media Bureau

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